

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF)

TIMBERCREEK LLC)

SUNSET RIDGE)

WETUMPKA, T17N, R20E, S6)

ELMORE COUNTY, ALABAMA)

EXPIRED NPDES ALR16EBWC)

ORDER 10-XXX-WP

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), the Alabama Water Pollution Control Act (hereinafter "AWPCA"), Ala. Code §§ 22-22-1 to 22-22-14 (2006 Rplc. Vol.), the ADEM Administrative Code of Regulations (hereinafter "ADEM Admin. Code r.") promulgated pursuant thereto, and § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342, the Alabama Department of Environmental Management [hereinafter "Department"] makes the following FINDINGS:

1. The Operator is an Alabama developer constructing the residential subdivision Sunset Ridge (hereinafter "Facility") located in T17N, R20E, S6, located at 494 Sunset Ridge in Wetumpka, Elmore County, Alabama. Sediment and other pollutants in stormwater runoff from the Facility have the potential to discharge and/or have discharged to an unnamed tributary to Chubbehatchee Creek, a water of the State, classified for Fish & Wildlife.

2. The following acronyms are used in this Administrative Order and, when used, shall have the meaning of the name or title referenced below.

BMPs	Best Management Practices
NOR	Notice of Registration
NOV	Notice of Violation
NPDES	National Pollutant Discharge Elimination System
QCP	ADEM-recognized Qualified Credentialed Professional
UT	Unnamed Tributary

3. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16, (2006 Rplc. Vol.).

4. Pursuant to ADEM Admin. Code rs. 335-6-12-.05(1) and 335-6-12-.11(1), the Operator is required to submit to the Department an NOR in order to register for and obtain NPDES coverage prior to commencing and/or continuing regulated disturbance activities.

5. On August 1, 2008, the Operator submitted to the Department an NOR requesting NPDES coverage under ADEM Admin. Code ch. 335-6-12 for regulated disturbance activities and discharges of treated stormwater from the Facility. The NOR was not complete and the Operator was notified of the deficiencies by email. On August 7, 2008, the requested information to complete the NOR was submitted by the Operator. The Department granted registration ALR16EBWC to the Operator on August 7, 2008. Registration ALR16EBWC expired on August 6, 2009.

6. Pursuant to ADEM Admin. Code r. 335-6-12-.05(2), all NPDES construction sites/activities and non-coal mining sites/activities less than five acres in size in Alabama are required to fully implement and regularly maintain effective BMPs to the maximum extent practicable, and in accordance with the Operator's CBMPP that has been prepared by a QCP.

7. During an inspection of the Facility on May 6, 2008, the Department documented that the Operator had not registered for and obtained NPDES coverage prior to commencing regulated disturbance activities.

8. Pursuant to ADEM Admin. Code rs. 335-6-12-.05(3) and 335-6-12-.28, the Operator is required to ensure that comprehensive inspections of the Facility, offsite areas and stormwater conveyances, and associated receiving waters are conducted according to a prescribed schedule, after significant precipitation, and as often as needed by a QCP, to ensure that effective BMPs have been properly designed, implemented, and maintained. Each day there is activity at the Facility, the Operator or other qualified person is required to observe that portion of the Facility where construction disturbance has occurred and report any apparent BMP deficiencies to the Operator or QCP.

9. Pursuant to ADEM Admin. Code r. 335-6-12-.35(10)(a), the Operator is required to determine the nature, amount, and impact of a non-complying discharge, and remove, to the

maximum extent practical, sediment and other pollutants deposited offsite or in any State water.

10. During the May 6, 2008, inspection the Department documented that the Operator had not properly implemented and maintained effective BMPs resulting in discharges of sediment and other pollutants in stormwater runoff to an UT to Chubbehatchee Creek.

11. During the May 6, 2008, inspection by the Department, significant accumulations of sediment resulting from discharges at the Facility were observed offsite and in an UT to Chubbehatchee Creek.

12. On July 18, 2008, an NOV was sent to the Operator by the Department as a result of the May 6, 2008, inspection. The NOV requested the Operator to submit a completed NOR in order to obtain its NPDES registration coverage and provide a report detailing corrective actions certified by a QCP within thirty days of receipt of the NOV. The requested NOR was received by the Department on August 1, 2008. The requested QCP certification was received by the Department on August 29, 2008.

13. During inspections of the facility on October 10, 2008, and May 29, 2009, the Department documented that the Operator had not properly implemented and maintained effective BMPs resulting in discharges of sediment and other pollutants in stormwater runoff to an UT to Chubbehatchee Creek.

14. Pursuant to ADEM Admin. Code r. 335-6-12-.35(10)(a), the Operator is required to determine the nature, amount, and impact of a non-complying discharge, and remove, to the maximum extent practical, sediment and other pollutants deposited offsite or in any State water.

15. Pursuant to Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violations, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of

success of such person's efforts to minimize or mitigate the effects of such violations upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100 or exceed \$25,000 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

- A. SERIOUSNESS OF THE VIOLATIONS: The Department noted seven violations of ADEM Admin. Code chap. 335-6 and the AWPCA. Considering the general nature of each violation, the magnitude and duration of each non-compliant discharge, their effects, if any, on impaired waters, and any available evidence of irreparable harm to the environment or threat to the public, the Department determined the base penalty to be \$15,000.00.
- B. THE STANDARD OF CARE: In consideration of this factor, the Department noted that the standard of care taken by the Operator was not commensurate with the applicable regulatory requirements. However, the Department believes the base penalty noted above is sufficient to address this factor.
- C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Operator avoided certain costs associated with proper implementation and maintenance of BMPs, inspections, and recordkeeping, however, the magnitude of these cost savings and resulting economic benefit, if any, is unknown.
- D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS UPON THE ENVIRONMENT: The Department is unaware of any efforts by the Operator to minimize or mitigate the effects of the violations upon the environment.
- E. HISTORY OF PREVIOUS VIOLATIONS: In consideration of the Operator's history of previous violations, the Department enhanced the penalty by an additional \$5,000.00
- F. THE ABILITY TO PAY: The Operator has not alleged an inability to pay the civil penalty.
- G. The civil penalty is summarized in Attachment 1

ORDER

Based on the foregoing FINDINGS and pursuant to Ala. Code §§ 22-22A-5(10), 22-22A-5(12), 22-22A-5(18), and 22-22-9(i) (2006 Rplc. Vol.), it is hereby ORDERED:

A. That, within forty-five days of the issuance of this Administrative Order, the Operator shall pay to the Department a civil penalty in the amount of \$15,000.00 for the violations cited herein. Said penalty shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
PO Box 301463
Montgomery, Alabama 36130-1463

B. That the Operator shall immediately upon the issuance of this Administrative Order cease all construction, building, production, and related activity at the Facility other than BMP implementation / maintenance, and sediment removal / remediation. Construction and related activity other than BMP implementation / maintenance, and sediment removal / remediation is not authorized to resume until approved in writing by the Department.

C. That the Operator shall, upon the issuance of this Administrative Order, take immediate action to prevent, to the maximum extent practicable, sediment and other pollutants in stormwater leaving the Facility and prevent noncompliant and/or unpermitted discharges of pollutants to waters of the State.

D. That, within five days from the issuance of this Administrative Order, the Operator shall have a QCP perform a comprehensive inspection of the Facility, offsite conveyances, and affected State waters.

E. That, within ten days from the issuance of this Administrative Order, the Operator shall submit to the Department a CBMPP, prepared/certified by a QCP, detailing effective BMPs that meet or exceed the technical standards outlined in ADEM Admin. Code chap. 335-6-12 and the Alabama Handbook.

F. That, within thirty days from the issuance of this Administrative Order, the Operator shall fully implement effective BMPs, designed by a QCP, that meet or exceed the

technical standards outlined in the Alabama Handbook, the site CBMPP plan, and ADEM Admin. Code chap. 335-6-12, and correct all deficiencies at the Facility and offsite conveyances, including sediment removal or remediation.

G. That, within seven days of the completion of the activities required in F above, the Operator shall submit to the Department a certification signed by the QCP that effective BMPs that meet or exceed the technical standards outlined in the Alabama Handbook, the site CBMPP plan, and ADEM Admin. Code chap. 335-6-12 have been implemented, all deficiencies have been corrected, and full compliance with the requirements of ADEM Admin Code chap. 335-6-12 has been achieved at the Facility, offsite conveyances, and affected State waters.

H. That this Administrative Order must not affect the Operator's obligation to comply with any Federal, State, or local laws or regulations.

I. That final approval and issuance of this Administrative Order are subject to the requirement that the Department provide notice of proposed Administrative Orders to the public, and that the public have at least thirty days within which to comment on the proposed Administrative Order.

J. That, should any provision of this Administrative Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with federal or State law and, therefore, unenforceable, the remaining provisions herein shall remain in full force and effect.

K. That, except as otherwise set forth herein, this Administrative Order is not and shall not be interpreted to be a permit or modification of an existing permit under federal, State or local law, and shall not be construed to waive or relieve the Operator of the Operator's obligations to comply in the future with any permit coverage.

L. That the issuance of this Administrative Order does not preclude the Department from seeking civil penalties, criminal fines or other appropriate sanctions or relief against the Operator for the violations cited herein.

M. That failure to comply with the provisions of this Administrative Order shall constitute cause for commencement of legal action by the Department against the Operator for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this _____ day of _____, _____.

John P. Hagood, Director
Alabama Department of Environmental Management
1400 Coliseum Boulevard
Montgomery, AL 36110-2059
(334) 271-7700

Attachment 1

Penalty Calculation Worksheet

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
ADEM Admin. Code r. 335-6-12-.21(1); Failure to implement and maintain effective BMPs.	1	\$5,000.00		\$2,500.00
ADEM Admin. Code r. 335-6-6-.03(1); Unpermitted release of sediment to a UT to Chubbehatchee Creek.	1	\$5,000.00		\$2,500.00
Totals:	2	\$10,000.00		\$5,000.00

Economic Benefit: Unknown

Mitigating Factors: none

Ability to Pay: \$0

Civil Penalty: \$15,000.00

Footnotes

* See the “Findings” of the order a detailed description of each violation and the penalty factors.